IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1840 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FIROZBHAI HABIBBHAI DHANJI
Versus
THE STATE OF GUJARAT & ANR

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Appearance :
MR KIRTIDEV R DAVE for Applicant
MR AY KOGJE APP for Respondent No.1
Respondent No. 2 served

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 23/06/2006

ORAL JUDGMENT

1 Heard learned Advocate Mr. K.R. Dave for applicant and learned APP Mr. A.Y. Kogje for respondent No.1 State. Respondent No. 2 wife though served has not chosen to appear before this Court.

2 Present respondent No.2 wife Nafisaben Harunbhai Sajina preferred a Criminal Misc. Application No. 242 of 2003 in the Court of Third Joint Judicial Magistrate, First Class, at Nadiad, against the present petitioner for claiming maintenance under Section 125 of the Code of Criminal Procedure. After recording of evidence and hearing of the parties, vide judgment and order dated 12th of August, 2004, the learned Magistrate came to the conclusion that the application was required to be partly allowed and learned Magistrate directed the present petitioner - husband to pay maintenance to opponent No. 2 wife from 22nd of May, 2003, the date of application, at the rate of Rs. 2,000/- per month. Present petitioner preferred one Criminal Revision Application bearing No. 130 of 2004, in the Court of Sessions, Kheda at Nadiad. However, vide judgment and order dated 30th of December, 2004, the Presiding Officer, Fast Track Court No.3, Kheda at Nadiad, dismissed the said Criminal Revision Application and, hence, this Special Criminal Application to challenge both the orders passed by the courts below.

3 After going through the records and hearing the learned

counsels for the parties present, it appears that so far as the Special Criminal Application is concerned, after concurrent findings of fact by both the courts of below, no interference is required so far as the facts are concerned. However, learned Advocate for the applicant vehemently urged the issue in respect of the quantum of maintenance. It is submitted that though maintenance be awarded to the wife sufficiently to maintain herself, but at the same time, the income of the opponent – husband is also, undoubtedly, an important criteria to come to the conclusion in respect of consideration about quantum of maintenance to be awarded to the wife. It is submitted that having regard to the income, which is proved on record, the award of maintenance to the tune of Rs. 2,000/- is on the higher side and depriving of bread of the petitioner and, therefore, it was urged that the issue in respect of quantum of maintenance be taken into consideration.

4 It is found from the record that the opponent i.e. present petitioner in the courts below submitted his pay slip for the month of June, 2003. His gross income was Rs. 5,204/-. Out of which, an amount of Rs. 1,000/- was deducted towards GPF, etc. leaving carry home salary to the tune of around Rs. 4,200/-. Though the learned Magistrate came to the conclusion that the deductions made from the pay of present petitioner was, in fact, the savings of the petitioner, for which the petitioner was entitled to receive the said savings amount. It is also observed by the learned Magistrate

that the father of the opponent was serving in ST Corporation and was earning Rs. 15,000/- and after considering all these aspects, the learned Magistrate pleased to award Rs. 2,000/- to the respondent wife by way of maintenance.

5 Having gone through the record, it appears that almost one half of the carry home salary is awarded by learned Magistrate to the wife by way of maintenance. There cannot be any strait-jacket formula for arriving at a conclusion in respect of quantum of maintenance. Deductions from the salary of the petitioner, be it a saving, the carry home salary of the petitioner is admittedly around Rs. 4,200/-. The fact that the father of the petitioner is working with the ST Corporation, in the facts and circumstances of this case, may not have any concern with the quantum of maintenance. What is required to be seen is, the facts and circumstances of the case, needs of the wife and the capacity of the husband to pay. If those factors are taken together in consideration, it appears that the award of maintenance to the tune of Rs. 2,000/- is little bit on the higher side as the opponent i. e. petitioner has also to look after his needs after paying the amount of maintenance to the wife. Ordinarily, in extraordinary jurisdiction, the conclusions arrived at by the courts below, cannot be interfered with unless glaring injustice is noticed and substantial justice is required to be done between the parties. When not the whole matter, but this issue of quantum of maintenance is viewed from the angle as stated above, it appears that, interference is required

in extraordinary jurisdiction of this Court. It appears that from the facts and circumstances of the case and weighing relatively the circumstances of the husband and the wife, it would be just and proper to reduce the amount of maintenance from Rs. 2,000/- to Rs. 1,200/-. In my humble view, this will meet the ends of justice. In future any increase of income of the husband or change in circumstances, provisions of Section 127 always entitles a wife to claim for enhancement of the maintenance amount. Like wise, Section 127 of the Code of Criminal Procedure entitles a husband as well to file proper application.

6 In this view of matter, this application is allowed to the extent that the order passed by learned Judicial Magistrate, First Class on 12th of August, 2004 in Criminal Misc. Application No. 242 of 2003 as confirmed by the Revisional Court is modified to the extent that the husband to pay an amount o f Rs. 1,200/- to the wife respondent No.2 instead of Rs. 2,000/- per month as directed by both the courts below. Rule is made absolute to the above extent.

(J. R. VORA, J.)

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